IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2233 of 2007
With
FIRST APPEAL No. 2234 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SATYABHABEN THRO' POA HOLDER - Appellant(s)
Versus
MANOJKUMAR JAYPRAKASH PANDEY - Defendant(s)

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Appearance :
HL PATEL ADVOCATES for Appellant(s) : 1,
None for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/07/2007

ORAL JUDGMENT

1. As both the Appeals are arising out the common judgment and decree passed by the learned City

Civil Court, Ahmedabad, they are being disposed of by this common judgment.

2. First Appeal No. 2233 of 2007 is filed by the appellant – original plaintiff challenging the judgment and decree passed by the learned City Civil Court, Ahmedabad in Civil Suit No. 1627 of 1996.

First Appeal No. 2234 of 2007 is filed by the appellant – original plaintiff challenging the judgment and decree passed by the learned City Civil Court, Ahmedabad in Civil Suit No. 1626 of 1996. By impugned judgment and decree, the learned Trial Court has dismissed both the aforesaid Civil Suits.

3. That the original plaintiffs filed Civil Suits in the learned City Civil Court, Ahmedabad with a prayer that the vacant and peaceful possession of the premises in question may be handed over to them and also for the *mense profit* till the possession is handed over. It was the case on behalf of the plaintiff of Civil Suit No. 1626 of 1996 that he is the owner of the suit property bearing Tenament No. B-418, Nishit Park Cooperative Housing Society,

situated at Adinathnagar, Odhav and that the said property was purchased by Maha Gujarat Steel Rolling Mills Limited for providing as staff quarter to the plaintiff, it was purchased in the name of the plaintiff and, therefore, the plaintiff is in occupation and possession of the premises as the owner as well. It was averred in the plaint that the defendant was also working as Quality Control Engineer with Maha Gujarat Steel Rolling Mills Ltd. and the suit premises was given to the defendant for occupation as employee/ staff quarter till he was in services of the Maha Gujarat Steel Rolling Mills Ltd. It was submitted that the defendant was never the tenant as such and that he has resigned from the said Company and he is relieved in view of his resignation with effect from 25.09.1991. It was averred that as it was given for occupation as employee / staff quarter, the defendant has no right to continue the possession and occupation of the suit premises and that the defendant has unauthorizedly continued the possession and occupation of the premises. It was submitted that though he has been repeatedly requested to hand over vacant and peaceful possession

but he has refused and neglected to hand over vacant possession of the premises and that the defendant has also filed H.R.P. Suit No. 2494 of 1995 for claiming tenancy rights. It was submitted that the defendant was never tenant of the plaintiff and has no right to continue in possession and occupation of the suit premises. Therefore, it was prayed for aforesaid reliefs.

4. It was the case on behalf of the plaintiff of Civil Suit No. 1627 of 1996 that the plaintiff is the owner of the suit property bearing tenement B-417, Nishit Park Cooperative Housing Society, situated at Adinathnagar, Odhav. Both the suits were resisted by the defendants by filing written statement at Exh. 18. It was submitted that the plaintiffs are the owner of the said property and admittedly, Maha Gujarat Steel Rolling Limited was the owner of the said property. It was also further averred that City Civil Court has no jurisdiction to decide the matter as there is dispute between the defendant as tenant and and Maha Gujarat Steel Rolling Mills as the owner. Considering the rival contentions and submissions, the learned Trial Court

raised issues at Exh. 19. One of the issue was whether the plaintiffs prove that they are the owner of the suit premises. The evidence of the plaintiffs was recorded at Exh. 25. After considering and appreciating the evidence on record oral as well as documentary, the trial Court has held issue No.2 in negative i.e. the plaintiffs failed to prove that they are the owner of the suit premises being B- 417 and B-418, Nishat Park Cooperative Housing Society, Adihathnagar, Odhav and ultimately dismissed the aforesaid suit.

5. Being aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court in dismissing the aforesaid Civil Suits, the appellants – original plaintiffs have preferred the present First Appeals.

6. I have gone through the impugned judgment and decree passed by the learned trial Court as well as the Record and Proceedings of the case and after considering the same more particularly the evidence of the plaintiffs and cross-examination, the learned trial Court has rightly came to the conclusion that the plaintiffs have miserably failed to prove /

establish that they are the owners of the said premises. In the cross – examination it has been admitted by the plaintiffs that the suit has been filed by the plaintiffs on behalf of the Company to get the possession. No documentary evidence is produced with regard to ownership of the plaintiffs, on the contrary Power of Attorney holder of the plaintiff in the Cross – examination has admitted that he is not aware as to whether the plaintiffs are the members and whether any allotment letter has been been given by the society to them. It is also admitted in the cross-examination that the society has allotted the premises to the plaintiffs and as the defendants were workers of the Company and as the plaintiffs were not staying the Company has given the possession of the premises to the defendants. Thus, when the plaintiffs have failed to prove / establish that they were the owner of the suit premises being B-417 and B-418, Nisht Park Cooperative Housing Society, Adihathnagar, Odhav, the suits filed by the plaintiffs for getting possession itself are not maintainable as when admittedly Maha Gujarat Steel Rolling Mills is the owner of the aforesaid suit premises. The plaintiffs have no right to file the suits for claiming the possession.

7. Under the circumstances, the learned trial Court has rightly dismissed the suits for possession of the suit premises. No illegality has been committed by the learned trial Court in dismissing the suits more particularly and in view of issue No.2 that the plaintiffs have failed to prove and/or establish that they are the owners of the suit premises. Under the circumstances, both the appeals are required to be dismissed and are accordingly dismissed.

[M.R.Shah, J.]

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